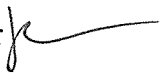


City of Lafayette Staff Report

For: City Council
By: Tony Coe, Engineering Services Manager 
Date Written: March 10, 2009
Meeting Date: March 23, 2009
Subject: Minor Subdivision 503-06, 45 Prado Way-
Approval of Subdivision; Authorization to Execute Access
Driveway Agreement; Authorization to Record Parcel Map;
Acceptance of Open Space Easement

Background/Discussion

The Planning Commission approved Minor Subdivision 503-06 on September 20, 2007 to create four parcels at the subject address. The property owner has complied with those conditions that must be met prior to the filing of the parcel map, including the posting of securities to guarantee the installation of subdivision improvements. City Council's action is required to authorize execution of the subdivision agreement and recordation of the map.

One of the parcels requires the construction of a long driveway and appurtenances to serve the future home on that parcel. The applicant has indicated that she has no immediate plans to develop on this parcel and requested relief from the financial burden of bonding for these improvements that would only be needed if development occurs. In consultation with the City Manager and City Attorney, staff is allowing the applicant to enter into an agreement to defer the bonding for this work until a transfer of title of the parcel in question occurs. If the title transfer does not occur, as a matter of course in the City's standard process, the City holds the discretion to require the improvements be completed as part of any development plan submitted by the applicant. Staff recommends approval and authorization to execute this agreement.

The applicant has also signed and notarized an Open Space Easement and Trail Easement to be granted to the City as required by the subdivision. City Council's action is required to authorize the City Clerk to accept and record the Open Space Easement. The Trail Easement dedication will be recorded, but acceptance is deferred until the time when the trail is improved for public use.

Fiscal Impact

None.

Recommendation

It is recommended that the City Council approve the subdivision and the access driveway agreements and authorize the execution of both and recordation of the parcel map.

It is also recommended that the City Council accept the Grant of Open Space Easement and authorize a recordation of a Certificate of Acceptance.

SUBDIVISION AGREEMENT
(Government Code §664462 and §66463)

Subdivision: MS 503-06 Effective: _____
Subdivider: Jeffrey Adam Mann Completion Period: _____
Elizabeth Jacqueline Garcia

1. **PARTIES & DATE.** Effective on the above date, the City of Lafayette, California, hereinafter called "City", and the above-named Subdivider, mutually promise and agree as follows concerning this subdivision:

2. **IMPROVEMENTS.** Subdivider agrees to install certain road improvements (both public and private), drainage improvements, signs, street lights, fire hydrants, landscaping and such other improvements (including appurtenant equipment) as required in the improvement plans for this subdivision as reviewed and on file with the City of Lafayette Public Works Department and in conformance with the Contra Costa County Ordinance Code (including future amendments thereto).

Subdivider shall complete said work and improvements (hereinafter called "work") within the above completion period from date hereof as required by the California Subdivision Map Act (Government Code §66410 and following), in a good workmanlike manner, in accordance with the accepted construction practices and in a manner equal or superior to the requirements of the County Ordinance Code and rulings made thereunder; and where there is a conflict between the improvement plans and the County Ordinance Code, the stricter requirements shall govern.

3. **SECURITY.** Upon executing this Agreement, the Subdivider shall, pursuant to Government Code §66499 and the County Ordinance Code, provide as security to the City:

A. For Performance and Guarantee: \$ 108,200⁰⁰ cash, plus additional security, in the amount of \$ _____ which together total one hundred percent (100%) of the estimated cost of the work. Such additional securities presented in the form of:

_____ Cash, certified check, or cashier's check.
_____ Acceptable corporate surety bond.
X _____ Acceptable irrevocable letter of credit.

With this security, the Subdivider guarantees performance under this Agreement and maintenance of the work for one year after its completion and acceptance against any defective workmanship or materials or any unsatisfactory performance.

B. For Payment: Security in the amount of \$ 54,100⁰⁰, which is fifty percent (50%) of the estimated cost of the work. Such security is presented in the form of:

_____ Cash, certified check, or cashier's check.
_____ Acceptable corporate surety bond.
X _____ Acceptable irrevocable letter of credit.

With this security, the Subdivider guarantees payment to the contractor, to his subcontractors, and to persons renting equipment or furnishing labor or materials to them or to the Subdivider.

C. Upon acceptance of the work as complete by the City and upon request of the Subdivider, the amount of the securities may be reduced in accordance with §94-4.406 and §94-4.408 of the Ordinance Code.

4. **GUARANTEE AND WARRANTY OF WORK.** Subdivider guarantees that said work shall be free from defects in material of workmanship and shall perform satisfactorily for a period of one (1) year from and after the City accepts the work as complete in accordance with Article 96-4.6, "Acceptance", of the Ordinance Code. Subdivider agrees to correct, repair or replace, at his expense, any defects in said work.

The guarantee period does not apply to road improvements for private roads which are not to be accepted into the City road system.

5. **PLANT ESTABLISHMENT WORK.** Subdivider agrees to perform plant establishment work for landscaping installed under this agreement. Said plant establishment work shall consist of adequately watering plants, replacing unsuitable plants, doing weed, rodent and other pest control and other work determined by the Public Works Department to be necessary to insure establishment of the plants.

Said plant establishment work shall be performed for a period of one (1) year from and after the City accepts the work as completed.

6. **IMPROVEMENT PLAN WARRANTY.** Subdivider warrants the improvement plans for the work are adequate to accomplish the work as promised in Section 2 and as required by the Conditions of Approval for the Subdivision. If, at any time before the City accepts the work as complete or during the one year guarantee period, said improvement plans prove to be inadequate in any respect, Subdivider shall make whatever changes are necessary to accomplish the work as promised.

7. **NO WAIVER BY CITY.** Inspection of the work and/or materials, or approval of work and/or materials or statement by any Officer, agent or employee of the City indicating the work or any part thereof complies with the requirements of this Agreement, or acceptance of the whole or any part of said work and/or materials, or payments therefore, or any combination of all of these acts, shall not relieve the Subdivider of his dedication to fulfill this Agreement as prescribed; nor shall the City be thereby estopped from bringing any action

action for damages arising from the failure to comply with any of the terms and conditions hereof.

8. INDEMNITY. Subdivider shall defend, hold harmless and indemnify the Indemnitees from the liabilities as defined in this section:

A. The Indemnitees benefited and protected by this promise are the City and its elective and appointive boards, commissions, officers, agents and employees.

B. The liabilities protected against or any liability or claim for damage of any kind allegedly suffered, incurred or threatened because of actions defined below, and including personal injury, death, property damage, inverse condemnation or any combination of these, and regardless of whether or not such liability, claim or damage was unforeseeable at any time before the City reviewed said improvement plans or accepted the work as complete, and including the defense of any suit(s), action(s) or other proceeding(s) concerning said liabilities and claims.

C. The actions causing liability are any act or omission (negligent or non-negligent) in connection with the matters covered by this Agreement and attributable to the Subdivider, contractor, subcontractor or any officer, agent or employee of one or more of them.

D. Non-Conditions: The promise and agreement in this section are not conditioned or dependent on whether or not any Indemnatee has prepared, supplied or reviewed any plan(s) or specification(s) in connection with this work or subdivision, or has insurance or other indemnification covering any of these matters or that the alleged damage resulted partly from any negligent or willful misconduct of any Indemnatee.

9. COSTS. Subdivider shall pay when due all the costs of the work, including inspections thereof and relocating existing utilities required thereby.

10. SURVEYS. Subdivider shall set and establish survey monuments in accordance with the filed map and to the satisfaction of the City Engineer before acceptance of any work as complete by the City.

11. NON-PERFORMANCE AND COSTS. If subdivider fails to complete the work within the time specified in this Agreement, and subsequent extensions, or fails to maintain the work, the City may proceed to complete and/or maintain the work by contract or otherwise, and Subdivider agrees to pay all costs and charges incurred by the City (including, but not limited to: engineering, inspection, surveys, contract, overhead, etc.) immediately upon demand.

Subdivider hereby consents to entry on the subdivision property by the City and its forces, including contractors, in the event the City proceeds to complete and/or maintain the work.

Once action is taken by City to complete or maintain the work, Subdivider agrees to pay all costs incurred by the City, even if Subdivider subsequently completes the work.

Should City sue to compel performance under this Agreement or to recover costs incurred in completing or maintaining the work, Subdivider agrees to pay all attorney's fees, and all other expenses of litigation incurred by City in connection therewith even if Subdivider subsequently proceeds to complete the work.

12. RECORD MAP. In consideration hereof, City shall allow Subdivider to file and record the Final Map or Parcel Map for said Subdivision.

THESE SIGNATURES ATTEST TO THE PARTIES' AGREEMENT HERETO:

CITY OF LAFAYETTE

SUBDIVIDER

Mayor of the City of Lafayette

ATTEST:

City Clerk

Jeffrey Adam Mang

Elizabeth Jacqueline Garcia

Elizabeth Jacqueline Garcia

(NOTE: All signatures to be acknowledged. If Subdivider is incorporated, signatures must conform with the designated representative groups pursuant to Corporations Code §313)

* * * * *

(This area for official notary flags. All signatures must be properly notarized in accordance with Civil Code Section 1180. The names and titles of the people signing the documents must be listed on the notary flag.)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

CONTRA COSTA

On

Jan 24, 2009

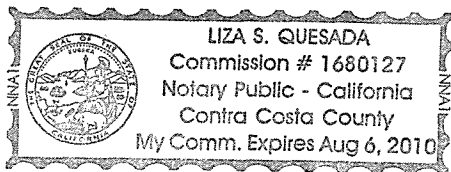
before me,

Liza S. Quesada, Notary Public

personally appeared

Elizabeth Jacqueline Garcia and

Jeffrey Adam Mann



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document:

Subdivision Agreement

Document Date:

Number of Pages:

Two

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name:

Elizabeth Jacqueline Garcia

Signer's Name:

Jeffrey Adam Mann

☒ Individual

☐ Corporate Officer — Title(s):

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other:

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing:

Self

☒ Individual

☐ Corporate Officer — Title(s):

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other:

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing:

Self

HERITAGE
BANK OF COMMERCE

RECEIVED

JAN 14 2009

CITY OF LAFAYETTE
PLANNING DEPT.

IRREVOCABLE STANDBY LETTER OF CREDIT

Our # 6267000101

January 6, 2009

BENEFICIARY:

The City of Lafayette
3675 Mt. Diablo Boulevard, Suite 210
Lafayette, CA 94549

CUSTOMER:

2005 Mann-Garcia Family Trust dated 07/07/05
45 Prado Way
Lafayette, CA 94549

Gentlemen:

We hereby establish our Irrevocable Standby Letter of Credit # 6267000101 in favor of The City of Lafayette, (the 'Beneficiary'), for the account of the customer up to the aggregate sum of \$162,300.00.

We undertake to honor from time to time your draft or drafts at sight on us not exceeding in the aggregate 162,300.00 U.S. Dollars when accompanied by the original letter of credit and, in the case of each draft, by your signed certified statement addressed to us stating: Beneficiary's signed statement that the terms of the contract between the City of Lafayette and the 2005 Mann-Garcia Family Trust dated 07/0705 has not been met.

We agree that we shall have no duty or right to inquire as to the basis upon which Beneficiary has determined to present to us any draft under this Letter of Credit, and presentation of such draft shall automatically result in payment to Beneficiary. We hereby waive any defense based upon any allegation of fraud.

This Irrevocable Standby Letter of Credit is valid until 01/02/2010 or upon the release by the City of Lafayette and drafts drawn hereunder, when accompanied by the items referred to above, will be honored if presented to us at our office at 101 Ygnacio Valley Road, Suite 100, Walnut Creek, CA 94596, on or before that date.

It is a provision of this Letter of Credit that it shall be deemed automatically extended, without written amendment, for one (1) year from the present or any future expiry date hereof, unless at least 60 days prior to any such expiry date, we notify you by certified mail, return receipt requested, or express courier at your address indicated herein, that we elect not to consider this letter of credit renewed for such additional one year period. Upon receipt by you of such notice from us, you may draw your Draft on us at sight when accompanied by your certification as described above and this original Letter of Credit. However, in no event shall this Letter of Credit be extended beyond January 2, 2014.

It is a condition of this Standby Letter of Credit that it is non-transferable and non-assignable in whole or in part, whether in operation of Law or otherwise.

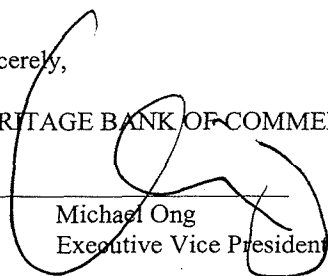
All drafts must be marked "Drawn Under Irrevocable Standby Letter of Credit # 6267000101 dated January 6, 2009 .

All of the terms and conditions of this Letter of Credit are contained herein and shall not be altered except by reduction in the amount due to corresponding payments in like amount in compliance with the aforementioned terms. There are no other conditions to this Letter of Credit.

Sincerely,

HERITAGE BANK OF COMMERCE

By



Michael Ong
Executive Vice President

Except as otherwise stated herein, this Letter of Credit is subject to the International Standby Practices 1998 ("ISP 98") and the laws of the State of California, and, in the case of any conflict between such laws and the ISP, the laws of the State of California will control.

**RECORDING REQUESTED AND
WHEN RECORDED TO:**

**City of Lafayette
Attn: City Clerk
3675 Mt. Diablo Blvd, Suite 210
Lafayette, CA 94549**

WHEN RECORDED MAIL TO:

Jeff and Jackie Mann
45 Prado Way
Lafayette, CA 94549

Mail Tax Statements to:

SAME

**AGREEMENT WITH CITY OF LAFAYETTE ON ACCESS DRIVEWAY
REQUIREMENTS**

THIS AGREEMENT has been made and entered into by and between Jeffrey A. Mann and Elizabeth Jacqueline Garcia, as Co-Trustees of the 2005 Mann-Garcia Family Trust, as owners of that certain improved real property commonly designated as 45 Prado Way, and as subdividers of certain real property as designated in Subdivision MS-503-06, City of Lafayette (Mann) and the City of Lafayette, a Municipal Corporation. (City) (The aforesaid real property is more particularly described in Exhibit A attached hereto and incorporated herein by this reference.)

RECITALS

A. On or about September 20, 2007, City approved a Vesting Tentative Subdivision Map MS-503-06 pursuant to which a certain single parcel of land owned by Mann was subdivided into four separate parcels all as depicted in said Map.

B. On or about _____, City approved a Final Subdivision Map relative to MS-503-06 and said Final Subdivision Map was recorded on _____ as Instrument No. _____.

C. Mann and City have heretofore entered into a Subdivision Improvement Agreement dated _____. (SIM) The SIM addresses the construction of an access driveway and related improvements including, but not limited to, retaining walls to be located on Parcel C of MS-503-06. (Access Driveway) The SIM did not require collateral from Mann relative to the construction of the aforesaid access driveway.

D. The City requires assurance that the Access Driveway to Parcel C shall be constructed in compliance with the conditions of MS503-06, described in Exhibit B. To that end, the parties have prepared this Agreement to provide constructive notice that the Access Driveway must either be actually constructed in accordance with the conditions of MC-503-06 or the costs of construction must be bonded or otherwise collateralized to the satisfaction of City prior to sale, transfer and/or conveyance of Parcel C to any third party.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. Access Driveway: Mann shall either construct the Access Driveway to the reasonable satisfaction of the City in accordance with conditions of approval of MS-503-06 or bond for the construction thereof on or prior to the sale, transfer and/or conveyance of Parcel C by Mann.

2. Failure of Compliance: In the event the Access Driveway is neither constructed nor bonded as provided in paragraph 1 above, then the requirement to construct the Access Driveway shall be expressly binding upon any and all grantees, heirs, executors, administrators, successors in interest and/or transferees of Parcel C and such grantees heirs, executor, administrators, successors in interest or transferees shall be obligated to physically construct the access driveway as a condition precedent to the issuance of any permits of any kind or sort pertaining to Parcel C.

3. City Action: In the event the City must take any action to enforce this Agreement or construct the Access Driveway, then it shall be reimbursed all of its costs, expenses and attorney's fees and the aggregate amount thereof shall be and become a lien against Parcel C in the priority recording position of this Agreement.

4. Miscellaneous: Reference is made to MS 503-06 and all conditions of approval, the terms and conditions of which are expressly incorporated herein and a made a part hereof.

5. Mann hereby covenant that they are the only recorded owner of the Property and they are authorized to execute this Declaration. If there are more than one signer of this Declaration as Property Owner the obligations hereof are joint and several.

6. This Agreement pertains to and runs with the Property described in Exhibit A. This Declaration binds the grantees, heirs, executors, administrators, successors in interest, and transferees of Mann.

IN WITNESS WHEREOF, the parties have executed this Memorandum Agreement effective as of 11th day of February, 2009.

CITY OF LAFAYETTE

By: _____

By: Jeffrey Mann
Jeffrey Mann

By: Elizabeth Jacqueline Garcia
~~Jackie Mann~~ Elizabeth Jacqueline Garcia

**Jeffrey A. Mann and Elizabeth Jacqueline Garcia,
as Co-Trustees of the 2005 Mann-Garcia Family Trust**

By: Jeffrey A. Mann
Jeffrey A. Mann

By: Elizabeth Jacqueline Garcia
Elizabeth Jacqueline Garcia

— loose certificate attached —

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Contra Costa

On 2-11-09

Date

before me, R. REYES, Notary Public

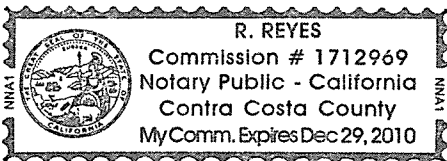
Here Insert Name and Title of the Officer

personally appeared ELIZABETH JACQUELINE GARCIA and

Name(s) of Signer(s)

JEFFREY ADAM MANN

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Signature [Signature]

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Agreement w/ city of Lafayette on Access driveway

Document Date: 2/11/09

Number of Pages: 2

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Elizabeth J Garcia

☒ Individual

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

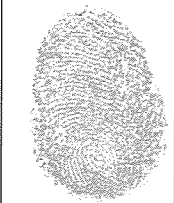
☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here



Signer's Name: Jeffrey A Mann

☒ Individual

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

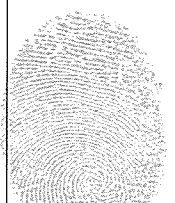
☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here



**RECORDING REQUESTED BY
CITY OF LAFAYETTE**

WHEN RECORDED MAIL TO

City of Lafayette c/o Lindy Coburn
3675 Mt. Diablo Blvd. #210
Lafayette, CA 94549

AND MAIL TAX STATEMENTS TO

NAME: Jeffrey & Jackie Mann
Attention:
ADDRESS: 45 Prado Way
CITY: Lafayette
STATE & ZIP: CA, 94549
APN: 231-090-001
SUBDIVISION: MS503-06

No Recording Fee—Exempt

Pursuant to Government Code Section 6103

OPEN SPACE EASEMENT

THIS OPEN SPACE EASEMENT (the "Easement") is made by Jeffrey A. Mann and Elizabeth Jacqueline Garcia, Trustees of the 2005 Mann-Garcia Family Trust dated July 7, 2005, dated ("Grantor"), to the CITY OF LAFAYETTE, a California municipal corporation ("Grantee").

RECITALS

WHEREAS, Grantor is the owner in fee simple of certain real property in the City of Lafayette, Contra Costa County, State of California, more particularly described in Exhibit "A" and depicted in Exhibit "B" attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the Property possesses open-space, and scenic values of great importance to Grantor, Grantee, the people of City of Lafayette, the people of Contra Costa County, and the people of the State of California; and

WHEREAS, Grantor intends that the Property be maintained as open-space, and in its natural condition existing as of the date of this Easement; and

WHEREAS, Grantor intends, as owner of the Property, to convey to Grantee an open-space easement in order to preserve and protect the open-space and natural condition of the Property in perpetuity pursuant to California Government Code Sections 51070-51097; and

WHEREAS, Grantee is a city authorized under California law to acquire and hold title to

real property and this Easement is voluntarily conveyed by Grantor;

WHEREAS, Grantee intends, by acceptance of the grant made hereby, forever to honor the intentions of Grantor to preserve and protect in perpetuity the open-space, and natural condition of the Property; and

WHEREAS, the recordation of the Easement is a condition of approval for MS503-06.

NOW, THEREFORE, for good and valuable consideration, and in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of California including, inter-alia, Sections 51070-51097 of the California Government Code, Grantor does hereby voluntarily grant to Grantee the Easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth.

1. Purpose. It is the purpose of this Easement to enable the Property to remain in its natural, scenic, and open-space condition existing as of the date of this Easement (the "Protected Values"),

2. Affirmative Rights and Interests Conveyed. To accomplish the purpose of this Easement, the following rights and interests are conveyed by Grantor to Grantee:

(a) the right to identify, preserve, and protect in perpetuity the Property as open-space, and to preserve the natural character, use, and utility of the Property (the "Protected Values").

(b) the right to enter on, inspect, observe, and study the Property for the purposes of (1) identifying the current uses and practices thereon and the baseline condition thereof; and (2) monitoring the uses and practices regarding the Property to determine whether they are consistent with this Easement and the Protected Values.

(c) the right to prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and the Protected Values, and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, or failure to act. However, it is the intention of this Easement not to limit Grantor's discretion to maintain temporary water lines or engage in activity reasonably necessary for the protection of the Property from brush fires or mudslides.

3. Uses and Practices. Grantee and Grantor intend that this Easement shall confine the uses of the Property to only those uses that are consistent with the purposes of the Easement and the Protected Values. Uses and practices consistent with the purpose of this Easement and Protected Values include improving and preserving the Protected Values of the Property, reasonable fire suppression, and mud slide and earth movement control.

4. Prohibited Uses. Any activity on or use of the Property inconsistent with the purposes of this Easement and the Protected Values is prohibited. Without limiting the generality of the foregoing, the following uses are expressly prohibited on/in the Easement:

(a) Constructing fencing except for perimeter fencing and fencing along the

individual boundary lines of the privately owned lots as approved by the Planning & Building Services Manager;

(b) Erecting of any billboard, radio or telephone towers or sign, with the exception of signs regarding trail use, safety issues and hours of operation;

(c) Depositing of soil, trash, ashes, garbage, waste, bio-solids or any other material;

(d) Removing, destroying, or cutting of trees, shrubs, plants, or other vegetation, except as required by law for (1) fire breaks, (2) prevention of landslides, (3) maintenance of existing trails or roads, or (4) prevention of treatment of plant and/or animal disease;

(e) Causing any thing or condition to exist which induces, breeds, or harbors infectious plant diseases or noxious insects;

(f) Constructing or maintaining structures, including but not limited to trailers, buildings, tents, shacks, garages, barns, temporary buildings, overhead pipes, conduits or wires for the purpose of transmitting messages, heat, light or power, unless approved by the Planning & Building Services Manager; and

(g) Grading, including but not limited to digging, excavating, transporting, placing, spreading, depositing in an embankment or fill, compacting or settling, or shaping of surfaces and slopes in excavations and on embankments, backfilling of trenches, pits, ditches and other excavations or natural depressions, and all other operations performed by or controlled by human agency involving the physical movement of rock or soil, except for emergency work, as authorized by the county building official, necessary to protect life, limb or property, or to maintain the safety, use or stability of a public way or drainage way as approved by the Planning & Building Services Manager; and

(h) Further subdivision of the Property.

The uses and practices set forth herein are not necessarily exhaustive recitals of consistent and inconsistent activities, respectively. They are set forth both to establish specific permitted and prohibited activities, and to provide guidance in determining the consistency of other activities with the purpose of this Easement and the Protected Values.

5. Current Practices and Conditions. Grantee acknowledges by acceptance of this Easement that the present uses of the Property are compatible with the purpose of this Easement and the Protected Values. In order to establish the present condition of the Property's protected values, Grantee may prepare an inventory of the Property's relevant features and conditions.

6. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. If Grantor

fails to cure the violation within 30 days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a 30-day period, fails to begin curing such violation within the 30-day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any protected values, including damages for any loss thereof, and to require the restoration of the Property to the condition that existed prior to any such injury. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the protected values of the Property, Grantee may pursue its remedies under this paragraph without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

7. Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs of suit and attorneys' fees, and any costs or restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor. If Grantor prevails in any action to enforce the terms of this Easement, Grantor's costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantee.

8. Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy on any breach by Grantor shall impair such right or remedy or be construed as a waiver.

9. Costs and Taxes. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property. Grantor shall pay any and all taxes, assessments, fees, and charges levied by competent authority on the Property or on this Easement. It is intended that this Easement constitutes an enforceable restriction within the meaning of Article XIII, Section 8 of the California Constitution and that this Easement qualifies as an enforceable restriction under the provisions of California Revenue and Taxation Code Section 402.1.

10. Hold Harmless. Grantor shall hold harmless, indemnify, and defend Grantee and its officers, officials, employees, agents, and contractors and the heirs, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without

limitation, reasonable attorneys' fees arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except to the extent of the adjudicated proportionate fault of any of the Indemnified Parties; and (2) the obligations specified in Paragraph 8.

11. Development Rights. The Grantor retains no rights of development that are inconsistent with the current practices and conditions of this Easement and the Protected Values.

12. Extinguishment. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the compensation to which Grantee shall be entitled from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined by a court of competent jurisdiction.

13. Assignment of Grantee's Interest. Grantee may assign its interest in this Easement only to an organization that is a "qualified organization," within the meaning of Section 170(h) of the Internal Revenue Code, as amended, or any successor provision, and that is authorized to acquire and hold open space easements under California law, on obtaining the prior written consent of Grantor. Any assignment without such consents shall be void and of no effect. Such consents shall not be unreasonably withheld by Grantor.

14. Executory Limitation. If Grantee shall cease to exist, or to be a qualified organization under Section 170(h) of the Internal Revenue Code of 1954, as amended, or is not authorized to acquire and hold open space easements under California law, then Grantee's rights and obligations under this Easement shall become immediately vested in another qualified organization within the meaning of 170(h) of the Internal Revenue Code, which has goals similar to those of the Grantee. Preference shall be given to such organizations whose primary activities take place in the City of Lafayette.

15. General Provisions.

(a) Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of California.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose California Government Code Sections 51070-51097. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

CONTRA COSTA

On

10/10/08

Date

before me,

K. DeGaine

NOTARY PUBLIC

Here Insert Name and Title of the Officer

personally appeared

JEFFREY A. MANN AND

Name(s) of Signer(s)

Elizabeth Jacqueline GARCIA

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

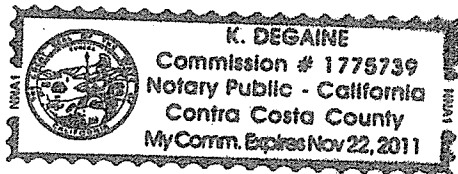
WITNESS my hand and official seal.

Signature

K. DeGaine

Signature of Notary Public

Place Notary Seal Above



OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

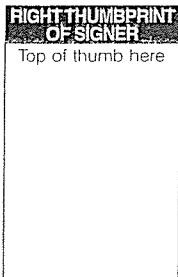
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

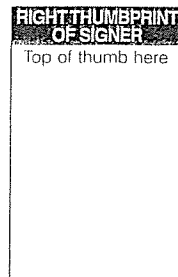
Signer Is Representing: _____



Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____



When Recorded mail to:
City Clerk
City of Lafayette
3675 Mt. Diablo Blvd., Suite 210
Lafayette, CA 94549

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property described as Open Space Easement conveyed by **Parcel Map MS 503-06** from **Mann-Garcia Family Trust Dated July 7, 2005**, to the City of Lafayette, a political corporation, is hereby accepted by the undersigned City Manager on behalf of the City Council pursuant to authority conferred by resolution of the City Council adopted on April 13, 1998, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

Steven B. Falk, City Manager
City of Lafayette

Attested: _____

Joanne Robbins, City Clerk
City of Lafayette

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

City of Lafayette
3675 Mt. Diablo Blvd., Suite 210
Lafayette, California 94549
Attention: City Clerk/Associate Planner LC

TRAIL EASEMENT

Jeffrey A. Mann and Elizabeth Jacqueline Garcia, Trustees of the 2005 Mann-Garcia Family Trust dated July 7, 2005 (together with its successors and assigns, "**Grantor**"), is the owner of that certain real property in the City of Lafayette, County of Contra Costa, State of California, as more particularly described in Exhibit "A-1" attached hereto and made a part hereof ("**Grantor Property**"). Grantor is the applicant for subdivision application MS503-06 relating to Grantor Property. The City of Lafayette, is a California municipal corporation (together with its successors and assigns, "**Grantee**").

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, by this Trail Easement (this "**Easement Agreement**"), Grantor does hereby GRANT to Grantee, for the benefit of Grantee, and the general public, a permanent irrevocable, non-exclusive easement in, to, over and across that portion of the Grantor Property consisting of an area of approximately twenty (20) feet in width as more particularly described in Exhibit "A-2" and made a part hereof (the "**Easement Area**"), for the purpose of entering upon the Easement Area to conduct activities related to the installation, maintenance, repair and replacement of pedestrian trails (collectively, the "**Trails**") and the use thereof by the general public for recreational purposes (the "**Trail Easement**"), together with the right to grant all or a portion thereof to third parties subject to the requirements set forth below.

1. Force Majeure Events. Notwithstanding the attached description of the Easement Area, both Grantor and Grantee acknowledge that the Easement Area consists of dirt trails and vegetation that are subject to movement, degradation, erosion and destruction from various influences including, without limitation, earthquakes, floods, wind, rain or other acts of God or events beyond the control of Grantor or Grantee (collectively, and as applicable, "**Force Majeure Events**"). Accordingly, Grantor and Grantee agree that the Easement Area described herein is subject to movement and relocation as a result of any such Force Majeure Events. Upon the occurrence of any Force Majeure Event that results in the movement of the Easement

Area or otherwise results in the total or partial destruction of the Trail Easement granted hereby, Grantor and Grantee agree to reasonably cooperate with each other in good faith in relocating the Easement Area or otherwise establishing a new Easement Area for the Trail Easement. In furtherance of the foregoing, Grantor and Grantee agree to execute and record an amendment to this Easement Agreement identifying and establishing the revised Easement Area.

2. Prohibited Uses. Any activity on or use of the Easement Area inconsistent with the purposes of the Trail Easement is prohibited. Without limiting the generality of the foregoing, the following uses are expressly prohibited on/in the Easement Area:

- a. The Easement Area is not to be used for access to the property while the property is being developed or improved unless such access is first approved by the City of Lafayette Planning Services Division. Any damage to the Easement Area or Trail Easement caused by such use is to be repaired and paid for by Grantor as specified and approved by the Planning Services Division Staff.
- b. The Easement Area is not to be encroached upon by fences, vegetation, earth mounds, drainage ditches, sheds, animal houses or structures of any kind.
- c. There shall be no dumping of rubbish, building materials, garden clippings, run off water, etc. on the Easement Area.
- d. Any vegetation shall be planted at sufficient distance from the Easement Area to ensure that present or future branches do not interfere with safe passage. If said branches do interfere with safe passage and Grantor does not remove them after being requested to do so by the City, the City shall have the right to remove said branches or growth at Grantor's expense.
- e. The Easement Area shall be marked by the Grantor with permanent survey markers as required by the City of Lafayette's Parks, Trails, & Recreation Department.
- f. If the Trail Easement is over a private road or driveway or other area which the owner wishes to post with signs indicating "Private", then trail signs shall also be posted by the Parks, Trails & Recreation Department indicating the Trail Easement and showing appropriate identification and directions including the City of Lafayette logo.

- g. Public passage over the Trail Easement shall not be restricted or obstructed in any manner when there is an installed Trail.

3. Notwithstanding the foregoing, in exercising its easement rights, Grantee covenants to Grantor, its successors and assigns that Grantee shall pay all costs associated with the installation of the Trails. Upon completion of the installation of the Trails, the City shall accept sole responsibility for all costs and expenses related to the maintenance, repair and replacement of the Trails. Grantor is informed by Grantee and understands that members of the general public will have access to the Trail Easement once it has been improved with the Trail and additional Trail Easements have been acquired on properties that are adjacent to the Easement Area to make the Trails usable. Until such time, Grantor shall retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Easement Area.

4. Successors and Assignment. The Trail Easement granted hereby shall run with the land and all of the rights and obligations of Grantor and Grantee under this Easement Agreement shall inure to the benefit of their respective successors, transferees and assigns. Grantee shall have the right to assign its rights and obligations under this Easement Agreement, provided that such assignment shall be in writing and shall specifically recite the assignee's agreement to all of the terms and conditions of this Easement Agreement.

5. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Easement Agreement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Easement Area resulting from any use or activity inconsistent with the purpose of this Easement Agreement, to restore the portion of the Easement Area so injured. If Grantor fails to cure the violation within 30 days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a 30-day period, fails to begin curing such violation within the 30-day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement Agreement, to enjoin the violation by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement Agreement or injury to any protected values, including damages for any loss thereof, and to require the restoration of the Easement Area to the condition that existed prior to any such injury. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the protected values of the Easement Area, Grantee may pursue its remedies under this paragraph without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the

terms of this Easement Agreement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement Agreement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement Agreement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

6. Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Easement Agreement against Grantor, including, without limitation, costs of suit and attorneys' fees, and any costs or restoration necessitated by Grantor's violation of the terms of this Easement Agreement shall be borne by Grantor. If Grantor prevails in any action to enforce the terms of this Easement Agreement, Grantor's costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantee.

7. Grantee's Discretion. Enforcement of the terms of this Easement Agreement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement Agreement in the event of any breach of any term of this Easement Agreement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement Agreement or of any of Grantee's rights under this Easement Agreement. No delay or omission by Grantee in the exercise of any right or remedy on any breach by Grantor shall impair such right or remedy or be construed as a waiver.

8. Hold Harmless. Prior to the City's installation of the Trails, Grantor shall hold harmless, indemnify, and defend Grantee and its officers, officials, employees, agents, and contractors and the heirs, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Area, regardless of cause, except to the extent of the adjudicated proportionate fault of any of the Indemnified Parties.

9. General Provisions.

(a) Controlling Law. The interpretation and performance of this Easement Agreement shall be governed by the laws of the State of California.

(b) Severability. If any provision of this Easement Agreement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(c) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement Agreement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement Agreement, all of which are merged herein.

**END OF EASEMENT
SIGNATURE PROVISIONS FOLLOW**

IN WITNESS WHEREOF, Grantor and Grantee have executed this Grant of Trail Easement on 3/16, 2009.

March 16, 2009

"GRANTOR"

By: *Elizabeth Jacqueline Garcia*
Elizabeth Jacqueline Garcia

By: *Jeffrey A. Mann*
Jeffrey A. Mann

Title: Trustees of the 2005 Mann-Garcia Family Trust

"GRANTEE"

City of Lafayette, a municipal corporation

_____, Mayor

ATTACH NOTARY ACKNOWLEDGMENTS

Signature Page - Grant of Trail Easement

Certificate of Acknowledgment

State of California)
County of Alameda)

On March 16, 2009, before me, Melanie Jo Sothorn, Notary, personally appeared
Date Insert Name and Title of the Officer)

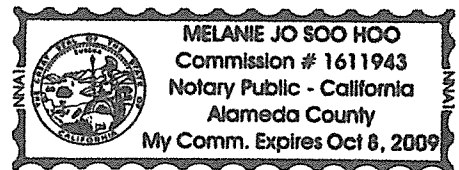
Jeffrey A. Mann who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledge to me that he executed the same in his authorized capacity and that by his signature on the instrument the person or the entity upon behalf of which the person acted, execute the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

Signature of Notary Public



Place Notary Seal Above

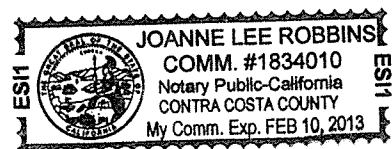
CERTIFICATE OF ACKNOWLEDGMENT

State of California)
County of Contra Costa)

On March 16, 2009 before me, Joanne Lee Robbins, notary
Date (here insert name and title of the officer)
personally appeared Elizabeth Jacqueline Garcia
Name(s) of Signer(s)
who proved to me on the basis of satisfactory evidence to be
the person ~~(s)~~ whose name ~~(s)~~ is/~~are~~ subscribed to the within
instrument and acknowledged to me that ~~he~~/she/~~they~~ executed
the same in ~~his~~/her/~~their~~ authorized capacity ~~(ies)~~, and that by
~~his~~/her/~~their~~ signature ~~(s)~~ on the instrument the person ~~(s)~~,
or the entity upon behalf of which the person ~~(s)~~ acted,
executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the
State of California that the foregoing paragraph is true and
correct.

WITNESS my hand and official seal.



Signature Joanne Lee Robbins
Signature of Notary Public

Place Notary Seal Above

The form of policy of title insurance contemplated by this report is:

CLTA Standard Coverage Policy -1990. A specific request should be made if another form or additional coverage is desired.

The estate or interest in the land hereinafter described or referred or covered by this Report is:

Fee as to Parcel(s) One and an Easement as to Parcel(s) Two and Three

Title to said estate or interest at the date hereof is vested in:

JEFFREY A. MANN AND ELIZABETH JACQUELINE GARCIA, trustees of the 2005 Mann-Garcia Family Trust dated July 7, 2005

The land referred to in this Report is situated in the County of Contra Costa, City of Lafayette, State of California, and is described as follows:

PARCEL ONE:

Portion of the Rancho Boca De La Canada Del Pinole, described as follows:

Beginning in the center line of Reliez Creek at the northeast corner of the 40 acre parcel of land described in the Deed from I. C. Taylor, et ux, to Milton L. Selby, et ux, dated April 15, 1940, and recorded April 20, 1940 (File No. 6625); thence from said point of beginning South 0° 59' 43" West along the East line of said 40 acre parcel 2448 feet to the center line of a creek; thence along said center line as follows: North 79° 09' East 72.49 feet; North 42° 15' East 30.53 feet; South 69° 10' East 30.93 feet; South 42° 11' East 64.33 feet; North 31° 43' East 64.89 feet; South 81° 28' East 80.90 feet; South 17° 49' East 29.41 feet; South 75° 38' 20" East 129.03 feet; South 46° 38' East 49.52 feet; South 68° 23' East 108.55 feet; North 83° 07' East 204.13 feet; South 60° 01' 40" East 180.57 feet and North 45° East 61.95 feet; thence leaving said center line South 24° 53' East 162.2 feet; thence North 84° 41' East 149.47 feet to the junction of the center line of the creek last above referred to, with the center line of Reliez Creek; thence along the center line of Reliez Creek as follows: North 90 feet; North 55° 25' 30" West 53.26 feet; North 43° 01' 30" West 61.55 feet; North 9° 49' West 52.77 feet; North 71° 14' 30" West 55.97 feet; North 48° 22' East 36.12 feet; North 51° 45' 30" West 192.26 feet; North 20° 56' West 86.72 feet; North 22° 35' East 109.39 feet; North 52° 20' West 72.01 feet; North 24° 09' 30" East 149.06 feet; North 6° 53' West 175.26 feet; North 34° 28' East 81.27 feet; North 0° 46' West 75 feet; North 34° 00' 30" West 100.13 feet; North 55° 18' East 31.62 feet; North 0° 18' 40" East 185.02 feet; North 5° 35' East 92.44 feet; North 27° 59' West 108.71 feet; North 8° 08' East 91.93 feet; North 85° 09' West 106.38 feet; North 7° 24' West 77.64 feet; North 1° 08' East 101.02 feet; North 43° 07' West 215.08 feet; North 10° 35' West 92.57 feet; North 34° 28' West 81.27 feet; North 31° 44' West 131.52 feet; North 46° 18' 50" West 144.97 feet; North 32° 03' West 261.92 feet; North 45° 39' 30" West 123.05 feet and North 51° 45' 30" West 117.7 feet to the point of beginning.

PARCEL TWO:

A right of way (not to be exclusive) as an appurtenance to the tract of land described as Parcel One above, for use as a roadway for vehicles of all kinds, pedestrians and animals, for water, gas, oil and sewer pipe lines and for conduits to carry said lines as provided for in the Deed from I. C. Taylor, et ux, to Cytha Dickey dated April 23, 1940 and recorded April 26, 1940 in Book 544 of Official Records, Page 308 over a strip of land 30 feet in width, described as follows:

November 3, 2008
Job No. 94101

EXHIBIT 'A'

LAFAYETTE CONNECTOR TRAIL

All that certain real property situated in the City of Lafayette, County of Contra Costa, State of California, described as follow:

Being a portion of the Rancho Boca de la Canada del Pinole, and a portion of the property described in the deed to Jeffrey Mann and Elizabeth J. Garcia Mann recorded August 26, 2003 in Series # 2003-0422846, more particularly described as follows:

BEGINNING at the southwesterly corner of said Mann parcel, said Point of Beginning also lies on the northerly line of the parcel of land described in the deed to Herrick (2002-326888);

THENCE leaving said Point of Beginning along said northern line of the Herrick parcel North $89^{\circ}59'30''$ West, 5.37 feet;

THENCE leaving said northern line of the Herrick parcel North $37^{\circ}34'35''$ West, 119.11 feet;

THENCE North $41^{\circ}38'00''$ West, 136.00 feet;

THENCE North $33^{\circ}30'00''$ West, 110.00 feet;

THENCE North $44^{\circ}15'00''$ West, 85.00 feet;

THENCE North $30^{\circ}20'00''$ West, 202.00 feet;

THENCE North $18^{\circ}48'00''$ East, 47.00 feet;

THENCE North $7^{\circ}10'00''$ West, 78.00 feet;

THENCE along a tangent curve to the right, having a radius of 60.00 feet, through a central angle of $60^{\circ}45'00''$, for an arc length of 63.62 feet to a point of reverse curvature,

THENCE along a tangent curve to the left, having a radius of 210.00 feet, through a central angle of $56^{\circ}45'00''$, for an arc length of 208.00 feet;

THENCE North $03^{\circ}10'00''$ West, 11.00 feet;

THENCE North $21^{\circ}00'00''$ West, 33.00 feet;



THENCE North $08^{\circ}45'00''$ East, 67.00 feet;

THENCE along a tangent curve to the left, having a radius of 6.00 feet, through a central angle of $137^{\circ}20'00''$, for an arc length of 14.38 feet;

THENCE South $51^{\circ}25'00''$ West, 158.27 feet;

THENCE North $18^{\circ}00'00''$ West, 73.93 feet;

THENCE South $56^{\circ}00'00''$ West, 80.86 feet;

THENCE North $37^{\circ}20'00''$ West, 51.00 feet;

THENCE North $19^{\circ}20'00''$ West, 129.00 feet;

THENCE North $42^{\circ}15'00''$ West, 205.00 feet;

THENCE South $89^{\circ}10'00''$ West, 56.00 feet;

THENCE North $38^{\circ}30'00''$ West, 143.54 feet;

THENCE North $83^{\circ}30'00''$ West, 48.18 feet;

THENCE along a curve to left, the center of which bears North $80^{\circ}12'48''$ West, having a radius of 75.00 feet, through a central angle of $15^{\circ}22'12''$, for an arc length of 20.12 feet.

THENCE South $83^{\circ}30'00''$ East, 58.00 feet;

THENCE South $38^{\circ}30'00''$ East, 142.00 feet;

THENCE North $89^{\circ}10'00''$ East, 66.00 feet;

THENCE South $51^{\circ}20'00''$ East, 164.00 feet;

THENCE South $31^{\circ}40'00''$ East, 87.00 feet;

THENCE South $12^{\circ}00'00''$ East, 127.00 feet;

THENCE North $58^{\circ}00'00''$ East, 82.00 feet;

THENCE South $18^{\circ}00'00''$ East, 72.00 feet;

THENCE North $51^{\circ}25'00''$ East, 155.00 feet;

THENCE along a tangent curve to the right, having a radius of 16.00 feet, through a central angle of $137^{\circ}20'00''$, for an arc length of 38.35 feet;

THENCE South 81°15'00" East, 51.75 feet;
THENCE South 02°51'00" East, 72.48 feet;
THENCE South 07°04'30" West, 372.10 feet;
THENCE North 89°07'38" West, 4.83 feet;
THENCE South 17°15'52" West, 83.00 feet;
THENCE South 22°33'08" East, 103.80 feet;
THENCE South 64°08'08" East, 107.70 feet;
THENCE South 12°08'08" East, 46.00 feet;
THENCE South 48°35'08" East, 32.20 feet;
THENCE South 31°21'52" West, 54.50 feet;
THENCE South 74°21'08" East, 42.30 feet;
THENCE South 00°06'52" West, 54.40 feet;
THENCE South 49°27'08" East, 40.80 feet;
THENCE South 42°46'08" East, 87.90 feet;
THENCE South 01°22'38" East, 70.31 feet to said Point of Beginning.